



Michigan Public Acts 199-203 of 2008

Kelly Howard, Manager, Child Welfare Services,
State Court Administrative Office

Vivek Sankaran, Clinical Assistant Professor of Law,
Child Advocacy Law Clinic, Michigan Law School

May 4, 2009

Summary of Changes to Juvenile Code

www.legislature.mi.gov



- Allows concurrent planning (MCL 712a.19(12)-(13))
- Notice to court and LGAL before placement change (MCL 712A.13b(2))
- Court must consider out-of-state placement options (MCL 712A.19a(3))
- Court must consider child's opinion of permanency plan (MCL 712A.19a(3))
- Court may appoint a juvenile guardian (MCL 712a.19a(7)-(15); MCL 712A.19c(2)-(13))
- Amends timeframe for filing a termination petition (MCL 712A.19a(6))
- Rescinds automatic suspension of parenting time when termination petition is filed (MCL 712A.19b(4))
- Termination must be in "child's best interests" (MCL 712A.19b(5))

Concurrent Planning

Public Act 202 of 2008

MCL 712a.19(12)-(13)



- Process of working towards family reunification while at the same time developing an alternative permanency plan in case the child cannot be safely returned home.
 - “Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child with the family.”
 - “Reasonable efforts to place a child for adoption or with a legal guardian, including identifying in-state or out-of-state options, may be made concurrently with reasonable efforts to reunify the child and family.”
- Required by the Children’s Rights Settlement.

Concurrent Planning

Public Act 202 of 2008

MCL 712a.19(12)-(13)



- Core elements:
 - Goal = Achieve permanency as quickly as possible.
 - Applies in any case where the permanency plan is reunification.
 - Locate all relatives.
 - Create a Plan A (reunification) and Plan B (other permanency).
 - Full disclosure to family: specific goals for parents to meet, specific plan if goals aren't met. Caseworkers should be candid and maintain credibility with family.
- SCAO training held on March 10, 2009 – will be available on website in mid-June.

Notice requirement before change of placement

Public Act 199 of 2008

MCL 712a.13b(2)(d)



- Before changing a child's placement, the agency must notify the court with jurisdiction over the child and the child's L-GAL. Notice to the court may be given by ordinary mail or electronic means. Notice shall include:
 - The reason for the change in placement.
 - The number of times the child's placement has been changed.
 - Whether or not the child will be required to change schools.
 - Whether or not the change will separate or reunite siblings or affect sibling visitation.

Court must consider out-of-state placement options

Public Act 200 of 2008

MCL 712a.19a(3)



- Based on 2006 federal Safe and Timely Interstate Placement of Foster Children Act (Public Law 109-239).
- At a permanency planning hearing, the court must consider out-of-state placement options.
 - **“In the case of a child who will not be returned home, the court shall consider in-state and out-of-state placement options.”**
 - **In the case of a child placed out-of-state, the court shall determine whether the out-of-state placement continues to be appropriate and in the child’s best interests.”**
 - **The court shall ensure that the agency is providing appropriate services to assist a child who will transition from foster care to independent living.”**

Court must obtain child's views

Public Act 200 of 2008

MCL 712a.19a(3)



- Based on 2006 federal Child and Family Services Improvement Act (Public Law 109-288).
- Requires courts to obtain the child's views of his/her permanency plan in a manner appropriate to child's age.
 - **“The court shall obtain the child's views regarding the permanency plan in a manner that is appropriate to the child's age.”**
- Feds grant states broad discretion to implement
 - Any action that permits the court to obtain the child's views in the context of the permanency hearing could meet the requirement.
 - Example: child's LGAL could provide court with information.

Juvenile Guardianship – Pre-Termination

Public Act 200 of 2008

MCL 71a.19a(7)-(15)



- In lieu of termination or returning child home, court may appoint a guardian at a Permanency Planning Hearing.
- PPH must be held every 12 months, but can be held sooner.
- Court must order DHS criminal history and central registry check within 7 days; and home study within 30 days unless completed w/in last year.
- Court must hold one additional review; then court closes CA/N case.
- Court CA/N case closes after review; but Juvenile Guardianship case continues.
- Juvenile Guardian has same powers and duties as EPIC guardian.
- Annual review of guardianship required.

Juvenile Guardianship – Pre-Termination

Public Act 200 of 2008

MCL 71a.19a(7)-(15)



- Legal /Processing Elements:
 - CA/N case closes after first review. JG case opens.
 - JG appointed at Permanency Planning Hearing = no petition required, no filing fee.
 - Case code = JG (Juvenile Guardianship); Caption = In the matter of (child's name).
 - Order “Juvenile Guardianship”, not “Subsidized Guardianship”.
 - Court could order child support, parenting time/sibling visitation, etc.
 - What goes into JG file?
 - Order appointing JG, home study, Letters of Authority, Annual Report, other papers throughout life of JG case.

Juvenile Guardianship – Post Termination

Public Act 203 of 2008

MCL 712a.19c(2)-(13)



- Court may appoint a guardian post termination with the consent of the MCI Superintendent.
- If consent not given, person can file motion with court alleging decision was arbitrary and capricious (similar to §45 hearing process in Adoption Code).
- If motion is filed, court shall set a hearing date and must find, by clear and convincing evidence, that the decision to withhold consent was arbitrary or capricious.
- All other requirements same as pre-termination guardianship.
- Court could order sibling visitation.

Terminating the Juvenile Guardianship

MCL 712A.19a(13) – (15)

MCL 712a.19c(11) – (13)



- Court may hold a hearing to determine whether a guardianship shall be revoked on its own motion or upon petition by the DHS or the L-GAL.
- Guardian may petition the court for permission to terminate the guardianship and may request the appointment of a successor guardian.
- If the court finds that by a preponderance of evidence that continuation of a guardianship is not in the child's best interests, the court shall revoke or terminate the guardianship.
- If this happens, court can either appoint a successor guardian or restore temporary legal custody to the DHS.



Terminating JG - Title IV-E Implications



- When restoring temporary custody to DHS:
 - Reopen the previous CA/N case.
 - Court should make Contrary to the Welfare and Reasonable Efforts to Prevent Removal findings.
 - ✦ Example: It is contrary to the welfare to return the child to the guardian because the guardian can no longer adequately provide for the child, and it is contrary to the welfare to return the child to the parents because they have not resolved their addictions to illegal substances. Reasonable efforts to prevent removal from the guardian were made. The reasonable efforts include therapy, school intervention, and truancy court services.
 - If JG was not a specified relative, Title IV-E may be compromised.

SCAO Draft Juvenile Guardianship Forms

Open for Comment: www.courts.michigan.gov



- JC 91 (Order Appointing Juvenile Guardian)
- JC 93 (Letters of Juvenile Guardianship)
- JC 94 (Annual Report of Juvenile Guardian)
- JC 95 (Order Appointing Person to Investigate Juvenile Guardianship)
- JC 96 (Report After Investigation of Juvenile Guardianship)
- JC 97 (Order Following Investigation and Report on Juvenile Guardianship)
- JC 98 (Petition to Terminate/Revoke Juvenile Guardianship, Notice of Hearing, and Order)
- JC 99 (Order Following Hearing on Petition to Terminate/Revoke Juvenile Guardianship)

Subsidized Guardianship



- PA 260 of 2008, amended by PA 15 of 2009, creates state Guardianship Assistance Act. MCL 722.871-881.
- Federal Fostering Connections Act (P.L. 110-351) authorizes Title IV-E funding for Guardianships.
- Caretaker must be licensed to receive subsidy.
- Child age 14+ must be consulted.

Subsidized Guardianship

Federal P.L. 110-351

MCL 722.871-881

Title IV-E Relative Subsidized Guardianship

- Funding source: Title IV-E (unlimited).
- Guardian must be a relative.
- Relative must become licensed as foster parent.
- Child must reside with licensed relative for 6 months before applying for subsidy.

State-funded Subsidized Guardianship

- Funding source: GF/GP, capped at \$4.6 million.
- Guardian can be a relative or non-relative.
- Must become licensed as foster parent.
- Child must reside with prospective guardian for 6 months.
- Child under age 3, guardian must be a relative unless exceptional circumstances are documented (DHS L-letter).

Juvenile Guardianship vs. EPIC Guardianship



- How is a JG different than a guardianship under EPIC?
 - The family division retains jurisdiction over the JG (the probate court handles EPIC guardians).
 - An annual review is required for all JG cases (EPIC only requires an annual review for a child under age 6).
 - The subsidized guardianship program only applies to JG cases.
 - Title IV-E funded JG cases automatically qualify for Medicaid.
 - JG cases are eligible for post-permanency services in same manner as post-adoption services.
 - EPIC GUARDIANSHIP IS TYPICALLY TEMPORARY – JUVENILE GUARDIANSHIP IS MEANT TO BE PERMANENT!

TPR Petition Filing Requirements

Public Act 200 of 2008

MCL 712a.19a(6)



- If court decides not to return child home at PPH, court MAY order agency to initiate termination proceedings.
- However, if child has been in foster care for 15 out of most recent 22 months, court MUST order agency to initiate termination proceedings; with exceptions:
 - Child is with relative.
 - “Compelling reason” in case plan proving that termination is not in child’s best interests.
 - Child’s family has not received appropriate services.

What are compelling reasons?



- MCL 712A.19a(6)(b)
 - Adoption is not the appropriate permanency goal for the child
 - No grounds to file a TPR petition exist
 - The child is an unaccompanied refugee minor
 - International legal obligations or compelling foreign policy reasons that preclude terminating parental rights

No automatic suspension of parenting time

Public Act 199 of 2008

MCL 712a.19b(4)



- Previous provision: parenting time automatically suspended upon filing of termination petition unless the parent could establish that parenting time would not harm the child.
- New language: if a termination petition is filed, the court “may suspend parenting time for a parent who is a subject of the petition.”

Termination in “Child’s Best Interests”

Public Act 199 of 2008

MCL 712a.19b(5)



- Requires court to find, in addition to a statutory ground for termination, that termination of parental rights is in the child’s best interest.
- Prior law required termination unless the court found termination was clearly not in the child’s best interest.
 - “If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.”

Contact Information



If you have any questions, please contact us:

- Kelly Howard, State Court Administrative Office
Child Welfare Services Division
howardk@courts.mi.gov
- Vivek Sankaran, Child Advocacy Law Clinic, University of
Michigan Law School
vss@umich.edu